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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,329	09/03/2003	Gregory Dean Sunvold	P139	5689

27752 7590 08/12/2005

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

GEMBEH, SHIRLEY V

ART UNIT	PAPER NUMBER
1614	

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/654,329	SUNVOLD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shirley V. Gembeh	1614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Information Disclosure Statement***

The Information disclosure statement (IDS) submitted on November 17, 2003 and February 13, 2004 have been considered.

### ***PTO 892***

Items N and O on the attached PTO-892 relies upon the entirety of the document for which the abstract is currently recited in the stated ground(s) of rejection. An english language equivalent or translation of each document will be provided as soon as possible.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 2, 6-11, 17-18, 22-23, and 30 are rejected under 35 U.S.C. 102(a) as being unpatentable by Sunvold US 6,071,544.

Sunvold discloses a dietary composition for promoting weight loss (see abstract) (claims 1) in a companion animal (cat as in claim 2) by administering one or more nonglyceryl fatty acid (column 2 lines 3+) derivatives of C<sub>17</sub> or greater fatty acids. Sunvold also teach the food composition comprises on a dry matter basis (claims 6,

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17 and 30) (0.09-0.5%) of C<sub>20</sub> at column 2 line 7+, and about 28-50 %protein (column 2 line 5+). The weight % of dietary fat is 7-27 (claim 6,17). Sunvold also discloses as in claim 7, 8 the dry matter weight of about 1% (claim 7) at column 2 lines 15+) and claim 8, 13, 18 (1-13%) at column 2 line 6. The patent reference also discloses fatty acid derivatives of eicosapentaenoic and linolenic acid at column 13 line 40 as in claims 10 and 11. Sunvold also discloses the fatty acids derivatives to contain 0-5 carbon-carbon bonds at column 13 line 38+ as in claim 9 of the application. Also Sunvold discloses protein selected from chicken, fish and the like at column 2 line 29+ as in claims 22 and 23.

Claims 1, 2, 6-11, 17-18 and 30 are rejected under 35 U.S.C. 102(a) as being unpatentable over The Procter and Gamble Company (P&G) WO 02/00042 A2.

P&G disclose compositions of long chain nonglycerol fatty acid (claim 1) on page 1 line 29+ administered with food consumption as in claim 4, as a supplement (claim 3) and incorporated into the companion food (claim 5) at page 7 line 21+ to a companion animal as in claim 2 (page 7 line 13). P&G also discloses as in claim 9 the carbon-carbon double bond to be 0-6 on page 6 line 26+, fatty acid derivatives selected from linoleic acid as in claim 10 and 11.

### ***Claim Rejections - 35 USC § 103***

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-38 are rejected under 35 U.S.C. 103(a) as being obvious over Sunvold US 6,071,544, The Procter and Gamble Company (P&G) WO 02/00042 A2, Hastings et al 5,626,849, Zhao US 2001/0002269 A 1, Wang et al., CN 1078613 A and Xu CN 1157103.

Sunvold teaches a dietary composition for promoting weight loss (see abstract) (claims 1) in a companion animal (cat as in claim 2) administering one or more nonglycerol fatty acid (column 2 lines 3+) derivatives of C<sub>17</sub> or greater fatty acids. Sunvold also teach the food comprises on a dry matter basis (claims 6, 17 and 30) (0.09-0.5%) at column 2 line 7+, and about 28-50 %protein (column 2 line 5+) and the weight % of dietary fat is 7-27% (claim 6,17). Sunvold also teaches as in claim 7, 8 the dry matter weight of about 1% (claim 7) at column 2 lines 15+) and claim 8, 13, 18 (1-

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13%) at column 2 line 6. The patent reference also teaches fatty acid derivatives to be eicosapentaenoic and linolenic acid at column 13 line 40 as in claims 10 and 11.

Sunvold also discloses the fatty acid derivatives to contain 0-5 carbon-carbon bonds at column 13 line 38+ as in claim 9 of the application. Also Sunvold teaches protein selected from chicken, fish and the like at column 2 line 29+ as in claims 22 and 23 and also pet food (cat) from lams.

P&G teaches a composition of long chain nonglycerol fatty acid (claim 1) on page 1 line 29+ administered with food consumption as in claim 4, as a supplement (claim 3) and incorporated into the companion food (claim 5) at page 7 line 21+, to a companion animal as in claim 2 (page 7 line 13). P&G teaches (current claim 9) the number of carbon-carbon double bond to be 0-6 on page 6 line 26+, fatty acid derivatives selected from linoleic acid as in claim 10 and 11. P&G also teaches the ethyl oleate taught at page 7 line 6-7 as in claims 12, 13 and 14.

Hastings et al teach the current claim 15 at least 100 mg of nonglycerol fatty acid is administered at column 3 lines 65+ and herbs (see abstract). The references (Sunvold et al., and P&G) teach animal feed composition which contain the instant amount of protein and fatty acid mixture as claimed, and the fat content in the reference is 7-27%.

The differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains because in animal feed, lower fat content as set forth in the reference(s)

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would have been obvious to one of ordinary skill in the art to formulate an animal feed. Lower fat content would have been expected to result in lower caloric intake, and one of ordinary skill in the art would have used the appropriate pet food for the companion animal. Where the reference discloses a cat food, one of ordinary skill in the art would have used kibble (for dogs) in place of kibble for cats as claimed by applicant. Hastings also teach the addition of herbs to the composition. The addition of herbs plays a vital role in the food industry, such as flavor, aroma and antioxidants.

Zhao teaches incorporating lotus leaf into food beverage as a weight control ingredient at § 0027 as in claims 25, 27, 28. Lotus leaf helps soothe summer heat and weight control.

Wang et al. teach lotus leaf as in claims 25, 29, 32 and 36 to be 5-10 g or 0.05-1% when calculated based upon the contents given in the abstract, absent factual evidence.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Sunvold, P&G with that of Hastings and administer the composition taught for success weight loss or weight control in a companion animal since the subject matter, weight loss and compounds used (nonglycerol fatty acid) are structurally the same, would administer a nonglycerol fatty acid for weight loss management and expect successful results. One of ordinary skill in the art would have known that a nonglycerol fatty acid diet would work because it is a known compound and known to be used in controlling/managing weight in both companion animals and humans.

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Although Hastings did not per se teach lotus leaf, one of ordinary skill in the art at the time the invention was made would have been motivated to add lotus leaf, either as a dry matter or as an extract to diet food, as one of ordinary skill in the art would have known that lotus leaf helps control body fat and lower blood lipid. The lower the intake of fat the lower the blood lipid level.

Furthermore, one of ordinary skill in the art would have combined the teachings of Zhao and Wang with that of Sunvold, P&G and Hastings to add lotus leaf to the composition for weight control. One of ordinary skill would have known that lotus leaf has been used in the Chinese culture as a food additive, in tea (see abstract on page six of the ref. by XU, S (1996), as an ingredient in cream for health maintenance of good health. The combined disclosures motivate one of ordinary skill in the art to add lotus leaf to the diet composition to maintain body fat using safe, natural components which have been used for centuries by the Chinese, Egyptians and many other nationalities for its aroma, its cooling effect and for its weight control property. Thus, one of ordinary skill in the art would have expected a successful result in the addition of lotus leaf or lotus leaf extract to dietary food compositions.

Therefore one of ordinary skill would have been motivated to combine the teachings of Sunvold, P&G, Hastings with that of Zhao as disclosed for the treatment of weight control. The cited prior art would have motivated one of ordinary skill in the art to select for weight control or management in a companion animal would have expected successful results.

Thus the claims are deemed prima facia obvious over the cited prior art.



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No claims are allowed.

The reference introduction to traditional Chinese medicine (TCM) teaches a Dr Kelly OMD has been practicing Chinese traditional medicine since 1987 and has used a composition containing lotus leaf (20%) for reducing weight i. e., burns fat and dispels damp (dispersing stagnant fluid "damp"). See reference page 4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shirley V. Gembah whose telephone number is 571-272-8504. The examiner can normally be reached on 8:30 -5:00 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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7/26/05



CHRISTOPHER S. F. LOW  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600